

PETITION FOR REMOVAL UNDER 28 U.S.C. § 1441 (B)

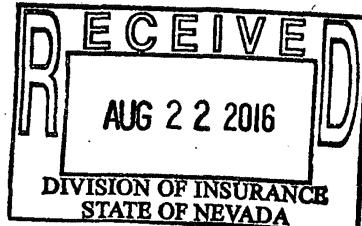
Exhibit “A”

Complaint – State Court Action

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1 ACOM
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Adam J. Schum
CLERK OF THE COURT



7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 DARLING JENNIFER MICHAELS YEPES,

10 Plaintiff,

Case No.: A-16-737261-C

11 vs.

Dept No.: XXXI

12 STATE FARM MUTUAL AUTOMOBILE
13 INSURANCE COMPANY,
14 DOES 1-100, ROE ENTITIES 1-100,
15 Inclusive,

Defendants.

**Arbitration Exempt Claimed Amount in
controversy in excess of \$50,000**

16 **PLAINTIFF'S FIRST AMENDED COMPLAINT**

17 COMES NOW, Plaintiff DARLING JENNIFER MICHAELS YEPES, by and through
18 her undersigned attorneys, RONALD A. COLQUITT, ESQ. and TONY L. ABBATANGELO,
19 ESQ. and submits her First Amended Complaint against the Defendant STATE FARM
20 MUTUAL AUTOMOBILE INSURANCE COMPANY, DOES 1-100, ROE ENTITIES 1-100,
21 and each of them, for damages, including punitive damages, alleges, on information and belief,
22 as follows:

23
24 1. At all times relevant herein, Plaintiff is and remains, a resident of Las Vegas,
25 Clark County, Nevada.
26
27 2. The Defendant STATE FARM MUTUAL AUTOMOBILE INSURANCE
28 COMPANY is an entity who was and still is authorized to do business under and by

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1 virtue of the laws of the State of Nevada and is licensed to transact insurance business
2 within Clark County, Nevada.

3. The true names and capacities of Defendants DOES 1 through 100 and
4 ROE ENTITIES 1 through 100, inclusive, are unknown at this time and may be
5 individuals, partnerships, corporations or other entities. The Plaintiffs allege that each
6 of the Defendants designated herein as DOES and/or ROE ENTITIES, Defendants
7 are responsible in some manner for the damages as herein alleged and is further the
8 agent, servant, master, employee or employer of one another, and is operating within
9 the course and scope of their duties or is otherwise established in another type of
10 relationship that will support a finding of joint and several liability. The Plaintiff
11 request leave of the Court, if necessary, to amend the Complaint to name the
12 Defendants when their identities become known.

13. 4. That at all times relevant herein, HURATHAI JAROENSUK, was a
14 licensed driver of a motor vehicle being operated on a public street in Clark County,
15 Nevada, was and is a resident of the State of Nevada. HURATHAI JAROENSUK is
16 not considered a party to this adversarial action other than as a potential witness at
17 trial.

18. 5. That at all times relevant hereto, the below-described incident, and all
19 facts that form the basis of this action occurred in the State of Nevada.

20. 6. That on or about December 11, 2014, in Clark County, Nevada,
21 HURATHAI JAROENSUK was operating a vehicle in such a negligent, reckless and
22 careless manner so as to cause it to collide into a vehicle operated by Plaintiff,
23 DARLING JENNIFER MICHAELS YEPES.

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- 1 7. That at the above-mentioned time and place, HURATHAI JAROENSUK
- 2 did violate the laws of the State of Nevada governing his conduct under the
- 3 circumstances and are thereby deemed to be negligent per se.
- 4 8. That as a direct and proximate result of the aforesaid negligence of
- 5 HURATHAI JAROENSUK, Plaintiff suffered extreme and serious permanent
- 6 injuries, great pain, loss of consortium, and anxiety. Her damages are both general
- 7 and special.
- 8 9. That as direct and proximate result of the aforesaid negligence of
- 9 HURATHAI JAROENSUK Plaintiff, was required to seek and incur expenses for and
- 10 to employ physicians, nurses, physical therapists, x-rays, MRIs, medicine and general
- 11 medical care and expenses in excess of TEN THOUSAND DOLLARS (\$10,000.00).
- 12 10. That on or about February 1, 2015, by virtue of negotiations through
- 13 counsel Plaintiff was able to obtain a policy limits settlement of FIFTEEN
- 14 THOUSAND DOLLARS (\$15,000.00). That as a result of said settlement, Plaintiff,
- 15 executed a Full and Final Release of All Claims in favor of HURATHAI
- 16 JAROENSUK, and State Farm Insurance Company.
- 17 11. That the Defendant, STATE FARM MUTUAL AUTOMOBILE
- 18 INSURANCE COMPANY issued an insurance policy to the Plaintiff, prior to the
- 19 accident of December 11, 2014.
- 20 12. That the plaintiff provided the defendant STATE FARM, with all
- 21 pertinent information required of her.
- 22 13. Plaintiff, through counsel submitted extensive medical bills and medical
- 23 records, sufficient to demonstrate damages in excess of \$50,000. Said UIM policy
- 24 covered all damages up to \$ 25,000.00.
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1 14. That Plaintiff sent a UIM policy limits demand that the Defendant STATE
2 FARM MUTUAL AUTOMOBILE INSURANCE, to pay the sum of \$25,000.00 to
3 settle her claims or uncap the policy. Plaintiff's request was fully documented, with
4 all relevant information necessary to easily justify the policy limit demand.

5 15. However, Defendant, STATE FARM MUTUAL AUTOMOBILE
6 INSURANCE COMPANY, in 2016, refused to even provide an evaluation of her
7 claim, even without offsets, making bad faith claims that they did not have all the
8 information. This was an unreasonable and insulting rejection of the claim, and the
9 reasonable value of past and anticipated medical bills alone are in excess of
10 \$50,000.00. The Plaintiff has permanent injuries, and this offer substantially and
11 egregiously understates the value of her claim.

12 16. That the defendant STATE FARM MUTUAL AUTOMOBILE
13 INSURANCE COMPANY'S refusal to promptly pay reasonable compensation his
14 injuries constitutes breach of contract, bad faith, and the Plaintiff, a covered party
15 under this policy, constitutes breach of contract, bad faith, for which he now sues and
16 seeks punitive damage in an amount in excess of TEN THOUSAND DOLLARS
17 (\$10,000.00).

18 17. Further, that the Defendant STATE FARM MUTUAL AUTOMOBILE
19 INSURANCE COMPANY'S refusal to honor its contractual duty to resolve this
20 claim fairly and expeditiously, and this refusal constitutes a breach of contract all to
21 his damage in an amount in excess of TEN THOUSAND DOLLARS (\$10,000.00).

22 **FIRST CAUSE OF ACTION**

23 **Breach of Contract Against State Farm Mutual Insurance Automobile Company**

24 18. Plaintiff repeats and realleges each and every allegation in the prior paragraphs as
25 if fully set out therein.

1 19. That the policy entered into between the Plaintiff and Defendant constitutes a
2 contractual relationship.

3 20. That all duties and conditions precedent required under the contractual
4 relationship have been fulfilled.

5 21. That the Defendant STATE FARM MUTUAL AUTOMOBILE INSURANCE
6 COMPANY, in refusing to promptly and fairly compensate the plaintiff for his
7 injuries, has not performed as agreed, despite the demands and herculean cooperation
8 and compliance.

9 22. That the Defendant's actions constitute a breach of contract, breach of the
10 contractual relationship and breach of the agreement between the parties.

11 23. That as a result the Plaintiff, DARLING JENNIFER MICHAELS YEPES. has
12 been damaged in excess of TEN THOUSAND DOLLARS (\$10,000.00),

13 24. That Plaintiff obtained the services of an attorney, and Defendant STATE FARM
14 MUTUAL AUTOMOBILE INSURANCE COMPANY should be required to pay
15 attorney's fees, due to the Defendant's breach.

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20 **SECOND CAUSE OF ACTION**

21 **Breach of Implied Covenant of Good Faith and Fair
Dealings against State Farm Mutual Automobile Insurance Company**

22 25. Plaintiff repeats and realleges each and every allegation the prior paragraphs as
23 if fully set out therein.

24 26. That Defendant STATE FARM MUTUAL AUTOMOBILE INSURANCE
25 COMPANY, owed a duty of good faith and fair dealing, inherent in the contractual
26 relationship, to Plaintiffs.

27 27. That the Defendant breached its implied covenant of good faith and fair

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1 dealing owed to Plaintiff and, as a direct or proximate result thereof. The Plaintiff,
2 DARLING JENNIFER MICHAELS YEPES, has been damaged in an amount in
3 excess of TEN THOUSAND DOLLARS (\$10,000.00).

4 28. That the Defendant's actions, their agents, attorneys, and others known and
5 unknown, were oppressive, willful and intentional, or done with reckless disregard for
6 the truth and Due Process, disregard for the possible consequences thereof and, as
7 such, punitive damages in an amount in excess of TEN THOUSAND DOLLARS
(\$10,000.00) should be awarded to punish Defendants and by way of example.

8 **THIRD CAUSE OF ACTION**
9 **Specific Performance**

10 29. Plaintiff hereby realleges the prior paragraphs as if fully set out therein.
11 30. That at all times relevant herein, Plaintiff complied with her contractual
12 obligations by timely paying premiums.
13 31. Defendants, known and unknown, have breached their contractual obligations
14 with Plaintiff through its acts or omissions including but not limited to failing to
15 provide fair compensation for his injuries.
16 32. That as a direct and proximate result of the breach of duty of Defendant STATE
17 FARM MUTUAL INSURANCE COMPANY, Plaintiff has been damaged in an
18 amount in excess of TEN THOUSAND DOLLARS (\$10,000).
19 33. That Plaintiff requests that this Court require Defendants, and each of them, to
20 specifically perform as required under the contract and pay his fair compensation for
21 his injuries.
22

23 **FOURTH CAUSE OF ACTION**
24 **Bad Faith against State Farm Mutual Automobile Insurance Company**

25 34. Plaintiff realleges the prior paragraphs as if fully set out therein.
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1 35. That NRS 686A.310 holds that an insurance company engages in unfair practices
2 by failing to effectuate prompt, fair and equitable settlement of claims in which
3 liability of the insurer has become reasonably clear.

4 36. That it was more than reasonably clear that the Plaintiff's damages are at least in
5 excess of \$50,000.00.

6 37. That the Defendant did not fairly and equitably attempt to settle this claim, instead
7 engaged in an unfair and biased investigation, calculated to deny full coverage.

8 38. That said actions constitute bad faith, and the Defendant should be awarded to pay
9 substantial damages in excess of TEN THOUSAND DOLLARS (\$10,000.00), to
10 deter future conduct, and by way of example.

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13 **FIFTH CAUSE OF ACTION**
14 **Unjust Enrichment**

15 39. Plaintiff realleges the prior paragraphs as if fully set out therein.

16 40. That the Defendant, STATE FARM MUTUAL AUTOMOBILE INSURANCE
17 COMPANY, received premiums from the Defendant, and did not fulfill their
18 contractual obligations, despite the retention of premiums.

19 41. That the Defendant's actions in retaining the premiums and while not fairly
20 attempting to compensate this claim constitutes an unjust enrichment.

21 42. That this unjust enrichment and conversion is willful and wanton, and the Plaintiff
22 is entitled to punitive and exemplary damages by way of example.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, who expressly reserves her right to amend this
26 Complaint at the time of trial to include additional parties and all items of damage not yet
27 ascertainable, demands Judgment against Defendants, and each of them, as follows:

- 1 1. For damages against Defendant, STATE FARM MUTUAL AUTOMOBILE
- 2 INSURANCE COMPANY, in a sum in excess of TEN THOUSAND DOLLARS
- 3 (\$10,000.00),
- 4 2. For specific performance of the contract, requiring the Defendant STATE FARM
- 5 MUTUAL AUTOMOBILE INSURANCE COMPANY to pay the claim and all costs
- 6 related and associated thereof,
- 7 3. For damages for breach of contract, in an amount in excess of TEN THOUSAND
- 8 DOLLARS (\$10,000.00),
- 9 4. For punitive damages for bad faith, breach of covenant of good faith and fair
- 10 dealing, unjust enrichment and conversion in excess of TEN THOUSAND
- 11 DOLLARS (\$10,000.00),
- 12 5. For reasonable attorney's fees, costs of suit incurred herein, and prejudgment
- 13 interest, and,
- 14 6. For such other and further relief as the Court may deem just and equitable.

15 DATED this 1st day of August, 2016

16 COLQUITT AND ABBATANGELO

17 /s/ Ronald A. Colquitt, Esq.

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